

**Letter of Findings: 08-0635**  
**Individual Indiana Income Tax**  
**For the Year 2007**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Adjusted Gross Income Tax – Burden of Proof.**

**Authority:** Ind. Const. art. X, § 8; IC § 6-3-1-1 et seq.; IC § 6-3-1-3.5(a); IC § 6-3-1-8; IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); I.R.C. § 61(a); I.R.C. § 62.

Taxpayer argues that the Department of Revenue has failed to meet its burden of proof necessary to substantiate a "proposed assessment" of additional income tax or justify the Department's denial of an income tax refund.

**STATEMENT OF FACTS**

Taxpayer filed an Indiana IT-40 income tax return. On that return, taxpayer reported that she had received "0" Indiana adjusted income during 2007. Taxpayer claimed a refund of the state and county tax which had been withheld by her employer. The Department of Revenue (Department) rejected the taxpayer's refund request and sent taxpayer a notice of proposed assessment. Taxpayer submitted a protest challenging the refund denial and the proposed additional assessment. The matter was assigned to a hearing officer. A hearing was scheduled during which taxpayer was provided an opportunity to explain the basis for her protest.

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**DISCUSSION**

Taxpayer objects to the use of the term "taxpayer" which is used herein as a matter of convenience and is a convention intended to preserve the anonymity of the person submitting the protest. In the absence of a ready alternative, this Letter of Findings will continue the long-standing practice of referring to "the person submitting the protest" simply as "taxpayer" because the term carries with it no legal or practical significance.

Taxpayer argues that the Department failed to meet its burden of demonstrating that she was not entitled to a refund of income taxes withheld on her behalf. Taxpayer states that she works for someone, that she does not receive taxable wages and/or income, and that she objects to the Department's use of the terms "employer" and "employee." Taxpayer states that she filled out her Indiana income tax correctly, that the money she received during 2007 was not taxable and that the money withheld on her behalf should be returned.

Taxpayer's argument is ambiguous at best but the relevant Indiana law is not. Under authority of Ind. Const. art. X, § 8, the General Assembly enacted the Adjusted Gross Income Tax of 1963 (Act). IC § 6-3-1-1 et seq. The Act defines "adjusted gross income" in the case of individuals, as the term is defined in I.R.C. § 62 with certain modifications specific to Indiana. IC § 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus... [certain] deductions." I.R.C. § 62. Similarly, the Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC § 6-3-1-8. Therefore, "gross income" consists of "all income from whatever source derived..." I.R.C. § 61(a) (Emphasis added). Without further evidence to the contrary, the Department must conclude that the compensation taxpayer obtained from her "employer" falls within the definition of "income from whatever source derived..." Id.

Taxpayer maintains that the Department has no authority to "correct" her 2007 tax return or to ignore the documents she supplied with that return. IC § 6-8.1-5-1(b) states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." IC § 6-8.1-5-1(c) provides that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer argues that the "Indiana department of revenue does not have any first hand knowledge of my Federal taxable activities," that all contentions to the contrary "have been rebutted by me on [the] IT-40," and that the IT-40 and attachments constitute "the best information available to the department...." However, taxpayer leaves unexplained the nature of the income/money/gain obtained from the entity for which she works. Taxpayer states that this "entity" is not her "employer" and that she is not an "employee," but this "entity" paid uncategorized compensation and improperly withheld state and local tax on her behalf. Taxpayer concludes that she is not subject to federal or state income tax and that the sums withheld should be forwarded to her.

This contention is meritless. IC § 6-8.1-5-1(b) clearly provides that the Department "shall make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." The Department's authority to correct an erroneous return is a statutory imperative. Faced with the information it

had before it at the time it made the decision to do so, the Department was authorized and required to deny the refund and assess additional income tax.

**FINDING**

Taxpayer's protest is denied.

*Posted: 01/28/2009 by Legislative Services Agency*

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